

IN THE CIRCUIT COURT OF COVINGTON COUNTY, ALABAMA
RECEIVED

JENNIE COURTNEY,
AS ADMINISTRATRIX OF THE ESTATE
OF DENNIS COURTNEY, DECEASED,

Plaintiff,

v.

ANTHONY CLARK, et al.,

Defendants.

2006 JUL -5 P 4: 34

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CIVIL ACTION NO. : CV-2006-110

2:06 CV 600 -

**DEFENDANTS ANTHONY CLARK, JERRY WAYNE EDGAR AND WALTER
INABINETT'S MOTION TO DISMISS**

COME NOW Covington County Sheriff Anthony Clark, Covington County Deputy Sheriff Jerry Wayne Edgar, and Covington County Deputy Sheriff Walter Inabinett, Defendants in the above-entitled action, and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, move this Court for an Order dismissing the Plaintiff's claims against them. As grounds therefor, Defendants state as follows:

1. The Plaintiff has filed a thirteen-count Complaint asserting twelve causes of action against Sheriff Clark, Deputy Edgar, and Deputy Inabinett. As understood by these Defendants, the Plaintiff's claims are:

- a. First Cause of Action: negligent failure to warn the public that the jail was insecure;
- b. Second Cause of Action: negligent hiring of the entity(ies) that designed, constructed, and maintained the jail's surveillance equipment;
- c. Third Cause of Action: negligent training of jail employees;
- d. Fourth Cause of Action: negligent inspection of the jail ventilation system;

- e. Fifth Cause of Action: negligent hiring of the entity(ies) that were “responsible” for the surveillance equipment at the jail;
- f. Sixth Cause of Action: negligent installation of the jail’s ventilation system;
- g. Seventh Cause of Action: negligent failure to warn of the lack of security caused by the ventilation system;
- h. Eighth Cause of Action: wanton hiring of the entity(ies) that designed, constructed, and maintained the jail’s surveillance equipment;
- i. Ninth Cause of Action: wanton training of jail employees;
- j. Tenth Cause of Action: wanton inspection of the jail ventilation system;
- k. Eleventh Cause of Action: negligent hiring of the entity(ies) that were “responsible” for the surveillance equipment at the jail; and
- l. Twelfth Cause of Action: negligent installation of the jail’s ventilation system.¹

2. The Complaint also alleges violations of Dennis Courtney’s Fifth and Fourteenth Amendment rights and states that the Complaint is brought pursuant to 42 U.S.C. § 1983.

3. The Defendants are sued in their individual and official capacities.

4. The Plaintiff’s official capacity federal claims are due to be dismissed because:

- a. These Defendants are immune under the Eleventh Amendment to the United States Constitution; and

- b. These Defendants, in their official capacities, are not “persons” for purposes of 42 U.S.C. § 1983.

5. The Plaintiff’s individual capacity federal claims are due to be dismissed as these Defendants are entitled to qualified immunity.

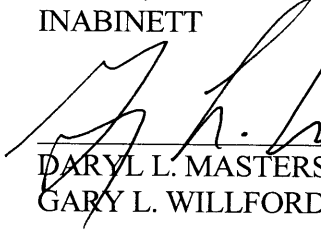
¹ The Plaintiff’s Thirteenth Cause of Action does not assert a claim against these Defendants. (Complaint at pp. 20-21.)

6. The Plaintiff's state law claims against these Defendants are due to be dismissed because under crystal clear Alabama law, Sheriff Clark, Deputy Edgar, and Deputy Inabinett are entitled to absolute immunity.

WHEREFORE, THE ABOVE PREMISES CONSIDERED, Defendants Covington County Sheriff Anthony Clark, Covington County Deputy Sheriff Jerry Edgar, and Covington County Deputy Sheriff Walter Inabinett request that the Court issue an Order dismissing the Plaintiff's claims against them.

Respectfully submitted, this 5th day of July, 2006.

ATTORNEYS FOR DEFENDANTS ANTHONY
CLARK, JERRY EDGAR, AND WALTER
INABINETT


DARYL L. MASTERS
GARY L. WILLFORD, JR.

(MAS018)
(WIL198)

OF COUNSEL:

WEBB & ELEY, P.C.
Post Office Box 240909
7475 Halcyon Pointe Drive
Montgomery, Alabama 36124
gwillford@webbeley.com
(334) 262-1850 Telephone
(334) 262-1889 Fax

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document by placing a copy of the same in the United States Mail, postage prepaid, upon:

Will G. Phillips, Esq.
J. David Greene, Esq.
Britt V. Bethea, Esq.
Greene & Phillips Attorneys
at Law, L.L.C.
50 N. Florida Street
Mobile, Alabama 36607

Black Creek Integrated Systems, Inc.
2130 AE Moore Drive
Moody, Alabama 35004-2903

Oscar Roy Doster AIS 177168
P. O. Box 150
Mt. Meigs, Alabama 36057

James Darren Harnage AIS 239251
P. O. Box 150
Mt. Meigs, Alabama 36057

Steven Keith Herndon, Esquire
Matthew Y. Beam, Esquire
Gidiere, Hinton, Herndon & Christman
60 Commerce St., Ste. 904
Montgomery, AL 36104

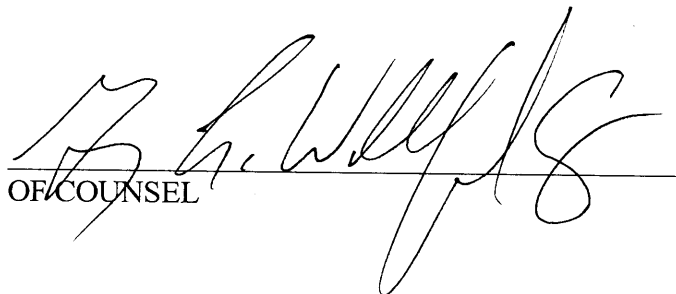
Seymour and Lisenby, Inc.
103 Wisteria Way
Ozark, Alabama 36360-7614

Darden Engineers, Inc.
P. O. Box 126
Dadeville, Alabama 36853-0126

Dickey & Associates, Inc.
1160 S. Lawrence Street
Montgomery, Alabama 36104-5038

Honorable Roger A. Powell
Covington County Circuit Clerk
Covington County Courthouse
Andalusia, AL 36420

this 5th day of July, 2006.



OF COUNSEL